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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
12 BENJA INCORPORATED, aka EPHE
13 CORPORATION,
14 Debtor.

Case No. 20-30819 DM
Chapter 7

KYLE EVERETT,
TRUSTEE IN BANKRUPTCY,

Adversary Proceeding No.

Plaintiff,

**COMPLAINT FOR AVOIDANCE AND
RECOVERY OF FRAUDULENT
TRANSFER; DISALLOWANCE OF
CLAIM; AND DECLARATORY RELIEF**

v.
THOMAS B. PETERS,

Defendant.

Plaintiff Kyle Everett, Trustee in Bankruptcy (“Plaintiff” or the “Trustee”) of the estate of Benja Incorporated (“Benja” or the “Debtor”), aka EPHE Corporation, files this adversary proceeding against Defendant Thomas B. Peters (“Defendant” or “Peters”), and in support thereof alleges as follows:

1. Benja is a Delaware corporation that filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code on October 15, 2020 (the “Petition Date”).

1 2. The Trustee was appointed as the Chapter 11 trustee on November 3, 2020. The
2 Chapter 11 case was converted to Chapter 7 on January 29, 2021, and the Trustee was appointed
3 as the Chapter 7 trustee.

4 3. This adversary proceeding seeks the avoidance and recovery of transfers from
5 Benja to Defendant made as part of a fraudulent scheme wherein Benja defrauded creditors and
6 investors to obtain funds used for the personal expenses and benefit of its Chief Executive Officer,
7 Andrew J. Chapin (“Chapin”), to pay obligations that arose from earlier fraudulent transactions,
8 and to continue and conceal the fraud.

9 4. Plaintiff is informed and believes that Benja was a San Francisco-based e-
10 commerce startup company founded by Chapin, who served as Benja’s CEO from its founding
11 until at least September 2020.

12 5. Plaintiff is informed and believes that Benja held itself out as a successful company
13 that had agreements with various retailers such as Backcountry, Columbia Sportswear, Fanatics,
14 New Balance, Nike, Patagonia, and Zappos, to drive consumer traffic to purchase goods from the
15 retailers, with Benja ostensibly to be compensated based on the number of impressions by
16 consumers of Benja’s advertising.

17 6. Plaintiff is informed and believes that Chapin falsely represented to creditors and
18 investors that Benja generated millions of dollars in revenue and had large contracts with
19 numerous well-known national companies to place advertisements for their excess inventory.
20 Plaintiff is informed and believes that, in a plea agreement in his criminal case, Chapin admitted
21 that Benja had no such contracts with or revenue from these companies. Plaintiff is further
22 informed and believes that Chapin also admitted to forging contracts, fabricating or altering
23 documents that reflected revenue, using falsified documents, impersonating corporate
24 representatives, or causing their impersonation, to create the appearance of business relationships
25 and profitmaking opportunities that did not exist in order to obtain additional financing.

26 7. Plaintiff is informed and believes that Chapin sought out loans and investors for
27 Benja, from which Chapin obtained funds to use for his personal expenses and benefit, to pay
28 obligations that arose from earlier fraudulent transactions, and to conceal Benja’s ongoing fraud.

1 8. Plaintiff is informed and believes that, at all relevant times, and other than de
2 minimis legitimate business transactions, Chapin operated Benja as a fraudulent scheme wherein
3 Benja made payments to creditors and earlier investors from the proceeds of later, fraudulently
4 obtained loans and investments, rather than from profits of the putative underlying business
5 venture. This pattern of using new money from later fraudulent transactions to fund the fulfillment
6 of earlier obligations constitutes a Ponzi scheme. The transfer of Benja's property to Defendant
7 was pursuant to a Ponzi scheme and not related to any legitimate business transaction, because in
8 fact no such legitimate profitmaking business existed.

9 9. Plaintiff is informed and believes that the transfer of Benja's property to Defendant
10 was made as part of Benja's fraud, with the actual intent to hinder, delay, or defraud Benja's
11 creditors, or that the transfer was not for adequate consideration, as discussed below. Plaintiff is
12 informed and believes that Benja incurred obligations for the purpose of acquiring funds necessary
13 for the continuation of the fraud. Plaintiff is informed and believes that, later, Chapin caused the
14 transfer of Benja's property to Defendant with the purpose of concealing the ongoing fraud.

15 10. Plaintiff requests that this Court grant relief avoiding and recovering transfer(s)
16 totaling no less than \$250,000, identified as the “Fraudulent Transfer” below, pursuant to 11
17 U.S.C. §§ 544, 548, 550 and California Civil Code § 3439.04 et seq. Plaintiff seeks the
18 disallowance of Defendant’s claim(s), if any, under 11 U.S.C. § 502(d). Plaintiff also seeks relief
19 declaring that Benja was operated as a Ponzi scheme.

JURISDICTION AND VENUE

21 11. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§
22 151, 157(a), 157(b)(2) and 1334, and under Rule 5011-1 of the Bankruptcy Local Rules for the
23 Northern District of California.

24 12. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. §
25 157(b)(2)(A), (B), (H), and (O).

26 13. This Court is the proper venue for this adversary proceeding pursuant to 28 U.S.C.
27 § 1409(a), because the Debtor's Chapter 7 case is pending in this judicial district.

28 14. Plaintiff consents to entry of a final order and/or judgment by this Court.

PARTIES

2 15. Plaintiff is the duly appointed Chapter 7 trustee for the bankruptcy estate of Benja.
3 The Trustee is duly authorized and empowered to pursue any and all claims of the Debtor's estate.

4 16. Plaintiff is informed and believes that Peters is an individual residing in California
5 at 14 College Ct, Larkspur, CA 94939.

FACTUAL ALLEGATIONS

7 17. Plaintiff is informed and believes that Defendant was an earlier investor in Benja
8 pursuant to a Simple Agreement for Future Equity (the “2019 SAFE”) entered into on or about
9 December 16, 2019, in the amount of \$50,000 for the right to certain shares of Benja’s capital
10 stock.

11 18. On September 4, 2020, Chapin sent an e-mail to Defendant soliciting additional
12 investment. Chapin represented that Walmart had shown interest in Benja's shoppable commerce
13 unit that allegedly had been implemented in TikTok, and Walmart may be interested in joining
14 Microsoft's bid for Benja. Chapin further represented that Benja planned to expand its
15 arrangement with TikTok at a cost of \$950,000 and hoped to raise additional investment from
16 Benja's group of existing investors to fund that effort. Plaintiff is informed and believes that these
17 representations were false and made to induce Defendant to invest in furtherance of the Benja
18 fraudulent scheme.

19 19. On September 9, 2020, Defendant sent an e-mail to Chapin to express his interest
20 in making a “much larger investment” in Benja, and asked to see a full diligence package,
21 including Benja’s current balance sheet, capitalization table, and contracts, prior to the additional
22 investment.

23 20. Between September 9 and 10, 2020, Chapin sent to Defendant the putative
24 financial documents of Benja. Plaintiff is informed and believes that these documents were
25 falsified documents made to induce Defendant to invest in furtherance of the Benja fraudulent
26 scheme.

27 21. On September 10, 2020, Defendant e-mailed Chapin seeking clarification regarding
28 the balance sheet that Chapin sent to Defendant, which did not show any liabilities or debt despite

1 Defendant being aware of Benja's obligations to Busey Bank and Empowerment Capital. On the
2 same day, Chapin replied to Defendant and represented that Benja had “[n]o obligations beyond
3 Busey and Empowerment.”

4 22. On or about September 14, 2020, Benja entered into a Simple Agreement for
5 Future Equity (the “2020 SAFE”) with Peters, pursuant to which Peters purchased the right to
6 certain shares of Benja’s capital stock for \$500,000.

7 23. At or about the same time, on September 14, 2020, Joe Alouf (“Alouf”), Benja’s
8 Chief Financial Officer, participated in a call with two of Benja’s directors, Scott Sklar (“Sklar”)
9 and Nick Foppe (“Foppe”), and Alouf shared with Sklar and Foppe his concerns about Chapin and
10 Benja and his discovery of millions of dollars in undisclosed obligations that Chapin had caused
11 Benja to incur.

12 24. On or about September 16, 2020, Alouf learned that Benja was in the process of
13 raising \$1.5 million in equity, of which about \$1 million had been funded.

14 25. Plaintiff is informed and believes that on or about September 17, 2020, Defendant
15 made a wire transfer to Benja in the amount of \$250,000 pursuant to the 2020 SAFE. In a text
16 message sent on September 17, 2020, Defendant explained that he would send the balance of the
17 \$500,000 investment after he converted other securities to cash.

18 26. At or about the same time, on September 17, 2020, Alouf participated in a
19 conference call with Benja’s board of directors and legal counsel to discuss his concerns about
20 Benja, particularly the certifications by Chapin to investors that Benja was not in default of any
21 loans. This certification was problematic, as loans from Busey Bank, Empowerment Capital, and
22 MHC Financial Services were in default at the time. Alouf demanded full access to Benja’s books
23 and records, so that he could begin the process of accurately presenting Benja’s financial condition
24 to lenders and investors.

25 27. After Chapin failed to provide Alouf with access to Benja’s books and records by
26 the end of business day on September 17, 2020, Alouf sent an e-mail to Chapin and the other
27 parties who participated in the conference call to notify them of Chapin’s failure and that if Alouf
28 did not receive access to Benja’s books and records, Alouf could not continue with the company.

1 Chapin promptly replied to Alouf's e-mail purportedly accepting Alouf's "resignation," which
2 Alouf interpreted to mean that he was fired.

3 28. On September 18, 2020, Chapin sent a text message to Defendant informing him
4 that the wire transfer of \$250,000 had not arrived. Defendant replied to Chapin: "It seems like
5 there's something pressing on you for funds."

6 29. Later on September 18, 2020, Chapin sent a text message to Defendant confirming
7 that Benja had received the \$250,000 wire transfer.

8 30. On September 18, 2020, Defendant sent a text message to Chapin stated he "just
9 got a somewhat panicked [voicemail] from Michael Stern [at Empowerment Capital], said that
10 [Chapin] terminated [Alouf] yesterday. What's the situation there?"

11 31. As a result of Chapin's actions, Empowerment Capital accelerated its loan pursuant
12 to a notice dated September 18, 2020. Benja's legal counsel, Fenwick, thereafter advised Chapin
13 and Benja that if Alouf was not reinstated, Fenwick would withdraw as counsel. Benja's directors
14 also advised Chapin that they would resign. Other investors demanded Alouf's continued
15 involvement in the company.

16 32. On September 19, 2020, Chapin reinstated Alouf as Benja's CFO.

17 33. Plaintiff is informed and believes that, on or about September 22, 2020, Sklar and
18 Foppe were removed from or left Benja's board of directors.

19 34. On September 22, 2020, Pano Anthos e-mailed Chapin, and copied Defendant and
20 Alouf, to express his disapproval with Sklar and Foppe leaving Benja's board, stating that Chapin
21 "cannot be the only board member," and directed Chapin to "give [Alouf] the passwords and
22 usernames into the accounts."

23 35. Plaintiff is informed and believes that Alouf put in place an accounting control that
24 required two authorized signatures before a wire transfer could be made from Benja to third
25 parties. Plaintiff is further informed and believes that this control did not prohibit in-person
26 withdrawals/transfers to insiders, such as Chapin.

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1 36. On September 22, 2020, Chapin e-mailed Defendant the following: “Given how
2 much has changed in a material way, we will offer an opportunity to un-wind your [2020] SAFE
3 agreement, repurchasing for the full value that has been sent (\$250,000.00).”

4 37. Plaintiff is informed and believes that Defendant was on notice or had actual
5 knowledge of Benja’s apparent fraudulent activity and/or Ponzi scheme prior to obtaining Benja’s
6 offer to repurchase the 2020 SAFE for \$250,000.

7 38. On or about September 24, 2020, Chapin sent to Defendant the SAFE Repurchase
8 and General Release Agreement dated September 24, 2020 (the “Repurchase Agreement”),
9 agreeing that Benja would purchase the 2020 SAFE from Defendant for \$250,000 in cash by wire
10 transfer to Defendant’s account.

11 39. On September 25, 2020, Defendant e-mailed Chapin with redline revisions to the
12 Repurchase Agreement and stated: “I will execute this document and deliver to you with the
13 understanding that you may release it to the company and it will be in effect when the full amount
14 of \$250,000 is received in my account at RBC Wealth Management. I commit to this agreement if
15 and only if the funds are received today.”

16 40. Plaintiff is informed and believes that the Repurchase Agreement was never fully
17 executed but was fulfilled.

18 41. Plaintiff is informed and believes that Alouf refused to authorize transfer of
19 \$250,000 to Peters to repurchase of the 2020 SAFE from Defendant.

20 42. Plaintiff is informed and believes that, in light of Alouf’s refusal, and in order to
21 effectuate the transfer of \$250,000 from Benja’s account to Defendant for the purpose of
22 repurchasing the 2020 SAFE, Chapin personally went to the bank (Chase Bank) and caused Benja
23 to transfer the sum of \$250,000 and additional amounts to Chapin’s personal account at JPMorgan
24 Chase Bank, N.A., on or about September 25, 2020, and then immediately wired \$250,000 from
25 Chapin’s account to Defendant’s account at US Bank/RBC Capital Markets (the “Fraudulent
26 Transfer”).

27 43. Immediately prior to the transfer of Benja’s property to Chapin’s account as
28 described above, Chapin’s account had a balance of only \$39.62.

1 44. Plaintiff is informed and believes that the Debtor was insolvent at all relevant
2 times, including from September 4, 2020 through the Petition Date, such that the sum of the
3 Debtor's debts was greater than all of the Debtor's property at a fair valuation, and/or that the
4 Debtor was not generally paying its debts as they became due.

5 45. On October 1, 2020, Defendant sent a reply e-mail to Chapin recognizing Benja's
6 fraud, as follows:

7 Andrew,
I'm moving into new house right now and can't talk, probly [sic] can later today.
8 Here's one thing I'll share - I don't think this has been handled well from several
9 perspectives. I don't know all the facts. I know you spoke with Mike Birkel and I think that
[Foppe] & I may be in line with his comments. That said, there are some simple facts that
are disturbing and that people are very focused on.
10 The pdf's of Busey statements from early 2020 that you gave investors show for example
large deposits from Backcountry.com. [Alouf] got a data export of all Busey transactions
11 since the account was opened and those deposits don't show up in Busey's records. Thus
the assumption is that the statements are forged. There is a pretty long list of open
12 questions like this regarding past statements, forged names of other investors who claim
not to have invested, etc. Who's your counsel at Wilson?
13 Tom

14 46. Plaintiff is informed and believes that, based on the information he had obtained,
15 Defendant knew at the time the Fraudulent Transfer was made that his right to certain shares of
16 Benja's capital stock under the 2020 SAFE was worthless or worth nowhere near the value he
17 received from the Fraudulent Transfer. Moreover, whether Defendant knew that the interests held
18 under the 2020 SAFE were worthless, those interests were in fact of no value at the time
19 Defendant received payment for them.

FIRST CLAIM FOR RELIEF
Avoidance of Actual Intent Fraudulent Transfer
11 U.S.C. § 548(a)(1)(A)

22 47. Plaintiff realleges each and every allegation set forth above and incorporates them
23 by reference.

48. The Debtor presently has one or more creditors whose claim arose either before or
49. after the Fraudulent Transfer to Defendant.

49. The Debtor made the Fraudulent Transfer to Defendant within two years before the
Petition Date.

1 50. The Fraudulent Transfer was a transfer of an interest of the Debtor in property, and
2 was made with actual intent to hinder, delay, or defraud any entity to which the Debtor was
3 indebted or became indebted on or after the date the transfer(s) was made. *See Hayes v. Palm*
4 *Seedlings Partners-A (In re Agric. Research & Tech. Grp., Inc.)*, 916 F.2d 528, 535 (9th Cir.
5 1990) (“[T]he debtor’s actual intent to hinder, delay or defraud its creditors may be inferred from
6 the mere existence of a Ponzi scheme . . . that knowledge that a transaction will operate to the
7 detriment of creditors is sufficient for actual intent”) (internal citations omitted).

8 51. Chapin was the initial transferee of the Fraudulent Transfer, who immediately
9 transferred that interest of the Debtor in property to Defendant. Such initial transfer is avoidable
10 under 11 U.S.C. §§ 544, 548, 550 and California Civil Code § 3439.04 et seq.

11 52. Because the initial transfer from Benja to Chapin is avoidable, Plaintiff may seek to
12 recover the Fraudulent Transfer or the value of such property against Defendant, who is the
13 subsequent transferee for whose benefit the Fraudulent Transfer was made.

14 53. The aggregate amount of the Fraudulent Transfer may be in excess of the above-
15 stated amount, and Plaintiff seeks avoidance and recovery of any and all additional transfers made
16 as a part of the scheme.

17 Based on the foregoing, Plaintiff requests judgment as set forth below.

SECOND CLAIM FOR RELIEF
Avoidance of Actual Intent Fraudulent Transfer
11 U.S.C. § 544(b), California Civil Code § 3439.04(a)(1) et seq.

54. Plaintiff realleges each and every allegation set forth above and incorporates them
by reference.

55. The Debtor presently has one or more creditors whose claim arose either before or
after the Fraudulent Transfer to Defendant.

24 56. Defendant obtained the Fraudulent Transfer as detailed above.

57. The Debtor made the Fraudulent Transfer to Defendant within four years before the
Petition Date.

27 58. The Fraudulent Transfer was a transfer of an interest of the Debtor in property, and
28 was made with actual intent to hinder, delay, or defraud any entity to which the Debtor was

indebted or became indebted on or after the date the transfer(s) was made. *See Hayes v. Palm Seedlings Partners-A* (*In re Agric. Research & Tech. Grp., Inc.*), 916 F.2d 528, 535 (9th Cir. 1990) (“[T]he debtor’s actual intent to hinder, delay or defraud its creditors may be inferred from the mere existence of a Ponzi scheme … that knowledge that a transaction will operate to the detriment of creditors is sufficient for actual intent”) (internal citations omitted).

6 59. Chapin was the initial transferee of the Fraudulent Transfer, who immediately
7 transferred that interest of the Debtor in property to Defendant. Such initial transfer is avoidable
8 under 11 U.S.C. §§ 544, 548, 550 and California Civil Code § 3439.04 et seq.

9 60. Because the initial transfer from Benja to Chapin is avoidable, Plaintiff may seek to
10 recover the Fraudulent Transfer or the value of such property against Defendant, who is the
11 subsequent transferee for whose benefit the Fraudulent Transfer was made.

12 61. The aggregate amount of the Fraudulent Transfer may be in excess of the above-
13 stated amount, and Plaintiff seeks avoidance and recovery of any and all additional transfers made
14 as a part of the scheme.

15 Based on the foregoing, Plaintiff requests judgment as set forth below.

THIRD CLAIM FOR RELIEF
Avoidance of Constructive Fraudulent Transfer
11 U.S.C. § 548(a)(1)(B)

18 62. Plaintiff realleges each and every allegation set forth above and incorporates them
19 by reference.

20 63. The Debtor presently has one or more creditors whose claim arose either before or
21 after the Fraudulent Transfer to Defendant.

22 64. The Debtor made the Fraudulent Transfer to Defendant within two years before the
23 Petition Date and the Fraudulent Transfer was a transfer of an interest of the Debtor in property.

24 65. The Debtor received less than a reasonably equivalent value in exchange for the
25 Fraudulent Transfer, as the interests represented by the 2020 SAFE repurchased from Defendant
26 was of no value.

27 66. The Debtor made the Fraudulent Transfer at a time when the Debtor (a) was
28 insolvent on the date(s) that the Fraudulent Transfer was made, or became insolvent as a result of

1 the Fraudulent Transfer; (b) was engaged in business or a transaction, or was about to engage in
2 business or a transaction, for which any property remaining with the Debtor was an unreasonably
3 small capital; (c) intended to incur, or believed that the Debtor would incur, debts that would be
4 beyond the Debtor's ability to pay as such debts matured; or (d) made the Fraudulent Transfer to
5 or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under
6 an employment contract and not in the ordinary course of business.

7 67. Chapin was the initial transferee of the Fraudulent Transfer, who immediately
8 transferred that interest of the Debtor in property to Defendant. Such initial transfer is avoidable
9 under 11 U.S.C. §§ 544, 548, 550 and California Civil Code § 3439.04 et seq.

10 68. Because the initial transfer from Benja to Chapin is avoidable, Plaintiff may seek to
11 recover the Fraudulent Transfer or the value of such property against Defendant, who is the
12 subsequent transferee for whose benefit the Fraudulent Transfer was made.

13 69. The aggregate amount of the Fraudulent Transfer may be in excess of the above-
14 stated amount, and Plaintiff seeks avoidance and recovery of any and all additional transfers made
15 as a part of the scheme.

16 Based on the foregoing, Plaintiff requests judgment as set forth below.

17 **FOURTH CLAIM FOR RELIEF**
18 **Avoidance of Constructive Fraudulent Transfer**
19 **11 U.S.C. § 544(b), California Civil Code § 3439.04(a)(2) et seq.**

20 70. Plaintiff realleges each and every allegation set forth above, and incorporates them
21 by reference.

22 71. The Debtor presently has one or more creditors whose claim arose either before or
23 after the Fraudulent Transfer to Defendant.

24 72. The Debtor made the Fraudulent Transfer to Defendant within four years before the
25 Petition Date and the Fraudulent Transfer was a transfer of an interest of the Debtor in property.

26 73. The Debtor received less than a reasonably equivalent value in exchange for the
27 Fraudulent Transfer, as the interests represented by the 2020 SAFE repurchased from Defendant
28 was of no value.

74. The Debtor made the Fraudulent Transfer at a time when the Debtor (a) was
engaged or was about to engage in a business or a transaction for which the remaining assets of the
Debtor were unreasonably small in relation to the business or transaction; or (b) intended to incur,
or believed or reasonably should have believed that the Debtor would incur, debts beyond the
Debtor's ability to pay as they became due.

5 75. Chapin was the initial transferee of the Fraudulent Transfer, who immediately
6 transferred that interest of the Debtor in property to Defendant. Such initial transfer is avoidable
7 under 11 U.S.C. §§ 544, 548, 550 and California Civil Code § 3439.04 et seq.

9 76. Because the initial transfer from Benja to Chapin is avoidable, Plaintiff may seek to
10 recover the Fraudulent Transfer or the value of such property against Defendant, who is the
11 subsequent transferee for whose benefit the Fraudulent Transfer was made.

12 77. The aggregate amount of the Fraudulent Transfer may be in excess of the above-
13 stated amount, and Plaintiff seeks avoidance and recovery of any and all additional transfers made
14 as a part of the scheme.

15 Based on the foregoing, Plaintiff requests judgment as set forth below.

FIFTH CLAIM FOR RELIEF
Liability of Transferee of Avoided Transfer
11 U.S.C. § 550(a)

18 78. Plaintiff realleges each and every allegation set forth above and incorporates them
19 by reference.

20 79. To the extent that the Fraudulent Transfer is avoided under 11 U.S.C. §§ 544 or
21 548, Plaintiff may recover, for the benefit of the estate, the property transferred, or, if the court so
22 orders, the value of such property, from (a) the initial transferee of such transfer or the entity for
23 whose benefit such transfer was made; or (b) any immediate or mediate transferee of such initial
24 transferee.

25 80. Chapin was the initial transferee of the Fraudulent Transfer, who immediately
26 transferred that interest of the Debtor in property to Defendant. Such initial transfer is avoidable
27 under 11 U.S.C. §§ 544, 548, 550 and California Civil Code § 3439.04 et seq.

81. Because the initial transfer from Benja to Chapin is avoidable, Plaintiff may seek to recover the Fraudulent Transfer or the value of such property against Defendant, who is the subsequent transferee for whose benefit the Fraudulent Transfer was made.

Based on the foregoing, Plaintiff requests judgment as set forth below.

SIXTH CLAIM FOR RELIEF
Disallowance of Claim
11 U.S.C. § 502(d)

82. Plaintiff realleges each and every allegation set forth above and incorporates them by reference.

9 83. Plaintiff objects to any claim or claims that Defendant has filed or may file or has
10 asserted or may assert in this bankruptcy case unless Defendant has paid the amount, or turned
11 over any such property, for which Defendant is liable under 11 U.S.C. § 550.

12 Based on the foregoing, Plaintiff requests judgment as set forth below.

EIGHTH CLAIM FOR RELIEF

Declaratory Relief

15 84. Plaintiff realleges each and every allegation set forth above and incorporates them
16 by reference.

17 ||| 85. Plaintiff alleges that Benja was operated as a Ponzi scheme.

18 86. To the extent Defendant disputes this contention, an actual controversy exists
19 between Plaintiff and Defendant concerning whether Benja was operated as a Ponzi scheme.

20 87. Plaintiff desires a judicial determination and declaration of whether Benja was
21 operated as a Ponzi scheme. Such a judicial determination is necessary and appropriate to the
22 extent a controversy exists between Plaintiff and Defendant.

23 Based on the foregoing, Plaintiff requests judgment as set forth below.

REQUEST FOR RELIEF

25 Based on the foregoing, Plaintiff respectfully requests that the Court enter judgment, as
26 follows:

27 A. For judgment avoiding the Fraudulent Transfer to Defendant under 11 U.S.C. §
28 548(a)(1)(A)

1 B. For judgment avoiding the Fraudulent Transfer to Defendant under 11 U.S.C. §
2 544(b) and California Civil Code 3439.04(a)(1).

3 C. For judgment avoiding the Fraudulent Transfer to Defendant under 11 U.S.C. §
4 548(a)(1)(B).

5 D. For judgment avoiding the Fraudulent Transfer to Defendant under 11 U.S.C. §
6 544(b) and California Civil Code 3439.04(a)(2).

7 E. For judgment permitting the Trustee to recover the property transferred or the value
8 of the avoided transfers under 11 U.S.C. § 550(a).

9 F. For judgment against Defendant disallowing any and all of his claims in the estate
10 until and unless Defendant has returned the avoidable transfers set forth above to the estate and
11 subordinating any and all such claims.

12 G. For declaratory judgment that Benja was operated as a Ponzi scheme with the
13 actual intent to hinder, delay, or defraud its creditors and investors.

14 H. For pre-judgment and post-judgment interest as allowed by law, and costs of suit.

15 I. For such other and further relief as the Court deems just and proper.

16 Dated: November 1, 2021

FINESTONE HAYES LLP

18 By: /s/ Stephen D. Finestone

19 Stephen D. Finestone

20 Attorneys for Kyle Everett, Trustee in Bankruptcy